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June 14, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William P. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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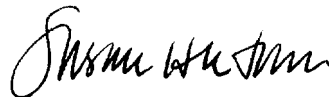
**Re: Comments Submitted to the Second Notice of Proposed Rule Making,
CC Docket No. 94-54**

Dear Mr. Caton:

Transmitted herewith, on behalf of Geotek Communications, Inc., are one (1) original and four (4) copies of Comments submitted in the above-referenced proceeding.

If you should have any questions related to this matter, kindly contact the undersigned counsel.

Sincerely,



Susan H.R. Jones

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Interconnection and Resale Obligations) CC Docket No. 94-54
Pertaining to)
Commercial Mobile Radio Services)

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Comments
of
Geotek Communications, Inc.

Geotek Communications, Inc. ("Geotek"), by its attorneys, and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits its comments in response to the Second Notice of Proposed Rulemaking ("NPRM") adopted in the above referenced proceeding. In the NPRM, the Commission seeks comment on its tentative conclusion not to require commercial mobile radio service ("CMRS") providers to ensure direct CMRS-to-CMRS interconnection, and its tentative conclusion to impose resale obligations on CMRS providers.

I. INTRODUCTION

Geotek, through its wholly-owned subsidiaries, is both a licensee and provider of services in the 900 MHz specialized mobile radio ("SMR") band. Although still developing its nationwide network, Geotek intends to provide an innovative and spectrum-efficient product, focusing upon commercial and business organizations providing internal network services to manage and control fleets of vehicles and personnel necessary to the operations of a mobile workforce. With a primarily two-way dispatch communications service, Geotek's customers will select from a variety

of wireless communications services provided over the 900 MHz spectrum band, including voice and data transmission, and/or interconnection to the public switched network.

In this NPRM, the Commission proposes that CMRS providers should not be required to ensure direct CMRS-to-CMRS interconnection at this time but tentatively concludes that CMRS providers should comply with certain obligations to resell their services to other CMRS providers. Specifically, the Commission seeks comment on whether certain classes of CMRS providers should be exempt from resale obligations and, if so, which classes and why.

Such discussions are of significant relevance to Geotek as a CMRS provider because the outcome of the Commission's decisions in this proceeding could have a significant impact on Geotek's present business and operational plans. Accordingly, Geotek welcomes this opportunity to participate in this proceeding.

II. COMMENTS

1. Direct Interconnection Between CMRS Providers Is Unnecessary At This Time.

Geotek strongly supports the Commission's tentative conclusion to decline the imposition of direct CMRS-to-CMRS interconnection obligations at this time. Geotek asserts that such an obligation is unnecessary and premature in the current CMRS marketplace.

In the Second Report and Order, the Commission defined CMRS providers as those who offer, for-profit, *interconnected mobile service through the PSTN* to a substantial portion of the public. Thus, interconnection between CMRS customers although not direct, is already available to CMRS customers, through the PSTN. Additional regulatory intervention is unnecessary. Further, given the current landscape of the CMRS marketplace with respect to both developing technologies and existing competition, Geotek suggests that any additional requirement for direct

CMRS-to-CMRS interconnection is premature and, if imposed, could be contrary to the public interest.

Geotek strongly supports the commenters to the Commission's rulemaking in earlier proceedings on this issue who argued that it is impractical to impose direct CMRS-to-CMRS interconnection obligations in the current CMRS marketplace where technology and system designs are still in developmental stages.¹ Geotek, as an example, is in the roll-out phase of its innovative technologies. It is thus difficult to discern, at this early stage of Geotek's and the industry's overall development, how best to achieve interconnection between CMRS carriers, whether such a requirement would be technically feasible, and what the economic impact would be upon SMR providers such as Geotek if direct interconnection were required. With such uncertainty in this regard, Geotek urges the Commission to refrain from imposing direct interconnection obligations or technical requirements upon CMRS providers.

Geotek underscores its position that direct CMRS-to-CMRS interconnection is unnecessary at this juncture by noting that the current CMRS marketplace is vitally competitive, with sufficient market forces to enforce open accessibility between CMRS providers should the customer demand it. Because of the competition, and thus lack of any dominant or bottleneck providers, regulatory intervention serves no purpose.

¹ See e.g., Comments of: Nextel Communications, Inc., at 18-19; The Southern Company at 4; OneComm Corporation at 21; Cellular Telecommunications Industry Association at 13-14, submitted in the Notice of Proposed Rulemaking and Notice of Inquiry, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service. CC Docket No. 94-54, 9 FCC Rcd 5408 (1994) ("Equal Access NPRM").

For the foregoing reasons stated herein, therefore, Geotek urges the Commission not to impose direct CMRS-to-CMRS interconnection at this time. To do so would be both unnecessary and increase costs for service providers.

2. Imposing Resale Obligations on CMRS Providers Will Not Serve the Public Interest.

In its NPRM, the Commission seeks comment on its tentative conclusion to impose resale obligations upon all CMRS providers, unless there is a specific showing that permitting resale would not be technically feasible or economically reasonable for a specific class of CMRS providers.² Geotek respectfully asserts that resale obligations are inappropriate within the majority of the CMRS industry, and specifically within the SMR industry, because of the existing diversity and competition within the market, and because such resale would inhibit the investment in, and innovative application of, technology by new providers entering the market. In this way, imposing resale obligation could have a negative economic impact upon the mobile communications industry. With respect to technical feasibility, it is difficult to determine at this early stage of the technical development of CMRS systems, whether resale is indeed possible.

A. Resale Obligations Are Not Appropriate For the SMR Industry Within the CMRS Marketplace.

The Commission has consistently supported the imposition of resale obligations to address potential anti-competitive or discriminatory practices by dominant carriers who might exert their market power to preclude the entry into the marketplace by smaller, less competitive providers. In invoking Sections 201(b) and 202(a) of the Communications Act of 1934, as amended (the “Act”), into its initial resale obligation requirements against wireline common

² NPRM, at ¶ 83.

carriers, the Commission prohibited any tariff provisions which restricted resale as “unjust and unreasonable,” or “unlawfully discriminatory.”³ In 1981, the Commission extended resale obligations to cellular providers, noting that with only two cellular licensees per market, the imposition of resale obligations would protect against “unlawful discriminatory practices” by one cellular licensee against the second. As a secondary matter, the Commission determined that by requiring resale of cellular services during the first five- (5-) year period of building a cellular network, and thus increasing the distribution of cellular service within a given market, public interest would be served by enervating the competition and creating a secondary market for cellular services.⁴

While Geotek respectfully supports the Commission’s efforts to promote competition through every effort, including the imposition of resale, Geotek asserts that resale obligations in the broad CMRS marketplace, and specifically the SMR market, would neither promote competition nor address the Commission’s original objectives in its earlier resale decisions.

The CMRS marketplace is a highly diverse market -- populated with active competitors, each serving or creating a niche market of customers. Although diverse, the CMRS market participants frequently cross boundaries to compete against categories or seek customers traditionally loyal to another industry. SMR providers, for example, generally target a mobile workforce with dispatch communications needs, yet enhanced or *wide-area* SMR (“ESMR”) operators offer two-way voice communications service which can compete with cellular

³ NPRM, at ¶ 60, *citing Resale and Share Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 163 (1976), *reconsideration*, 62 FCC 2d 588 (1977), *aff’d sub nom.*, AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978).

⁴ NPRM, at ¶ 61, *citing Cellular Communications Systems*, 86 FCC 2d 469, 511, 642 (1981), *modified*, 89 FCC 2d 58 (1982), *further modified*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

providers. Paging entities provide data transmission, although they have recently entered the market of messaging services similar to cellular or SMR. Cellular providers serve a segment of the public which seeks a mobile analogue to the home telephone, but also competes actively with public coast station operators who provide access to the PSTN through VHF maritime radios. Personal Communications Services (“PCS”), although still largely in development, will likely target private consumers and/or businesses with a variety of data and voice mobile communications needs, and is likely to emerge as a competitive force in virtually all of the CMRS markets. The Commission has acknowledged the present competition which thrives in the CMRS marketplace in its various rulemakings related to CMRS providers, noting in the Second Report and Order, In the Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket 93-252, 9 FCC Rcd 1411, ¶¶135, 137, that “the level of competition in the CMRS marketplace is sufficient to support a decision to exercise forbearance [of further Title II regulation]. . .” and that “the record supports a finding that all CMRS service providers, other than cellular service licensees, *currently lack market power.*” [Emphasis added.]⁵ With such active competition in the CMRS market, the need to impose resale obligations to prevent anti-competitive behavior is inapposite.

This argument is particularly true in the SMR industry, where the Commission has allocated three bands for use in this service. In the 900 MHz band alone, the Commission will authorize twenty (20) separate licensees to provide SMR services in each market. The twenty (20) licenses in each SMR market only account for direct competition from alternate SMR providers. With all of the other CMRS options, competition is likely to be rampant. With such

⁵ See, also, NPRM, at ¶ 36; Equal Access NPRM, at ¶ 33.

competitive forces at play in the field, therefore, no one provider is likely to have the opportunity to behave in an anti-competitive manner, nor serve as a bottle-neck facility to prevent or discriminate in the provision of services to the public. Although relevant for wireline entities with monopolies on local exchange service and for duopolies, as in the cellular market where one competitor could stamp out another, resale obligations in the broadly competitive CMRS market would address a danger that is very unlikely to arise.

Moreover, with so many active participants in the marketplace, protectionist measures, such as resale obligations, designed not only to promote competition but also to ensure the availability of service prior to a provider's build-out, are unnecessary. With the convergence of the diverse CMRS providers across service boundaries, a customer waiting for the completion of build-out of an ESMR provider can use cellular services, competing SMR providers, or PCS providers. In short, a consumer in the CMRS marketplace is apt to find a vast variety of alternate mobile communications services from which to choose while waiting for the build-out of its primary provider. Regulatory intervention, at this juncture, will not further the public interest and, in fact, is likely to act to its detriment.

B. Resale Obligations in the SMR Market Will Undermine Competition and Technical Innovation.

Because of its diverse technological landscape, the CMRS marketplace is uniquely different from the cellular or local exchange marketplaces. Simply, the broad umbrella of *commercial mobile communications services* permits entrepreneurial motivation to create new consumer needs and then develop new technologies to serve those needs. With the entry of PCS, ESMR, and the convergence of all CMRS into the mobile communications market, opportunities

and innovation among service providers are likely to increase. Geotek urges the Commission to decline to adopt any measures that might inhibit that continued growth and creativity.

Specifically, Geotek asserts that by adopting resale obligation requirements for CMRS providers, the Commission could encourage certain competitors entering the CMRS market to avoid significant investment toward technical innovation or build-out by simply reselling the technology and facilities of other providers. Geotek, as an example, has raised and invested significant capital to develop an innovative and unique technology in which it holds a proprietary interest. Had Geotek known, upon its initial entry into the mobile communications market, that others could simply appropriate its technological development and facilities, perhaps Geotek would not have expended such considerable resources to develop its own unique system design. To that end, the public interest would be disserved in that it would have one less opportunity, or option, within the mobile communications marketplace.

Geotek respectfully asserts that in a diverse marketplace such as CMRS, entrepreneurial motivation will stimulate technical creativity, which will ultimately provide to the public greater variety and access to mobile communications products. Innovation, such as Geotek's, should be rewarded by the Commission by granting to Geotek the right and freedom to choose its customers. To impose resale obligations, forcing Geotek to sell its technology, would be an unjust enrichment for those providers with no investment or interest in developing technologies or improving the communications opportunities available to the public.

Accordingly, Geotek respectfully urges the Commission to not impose resale obligations broadly upon all CMRS providers and, specifically, not to SMR providers. Such a policy would pose no threat to the competitive nature of the mobile communications marketplace and would

ultimately serve the public interest by ensuring the continued development of innovative and efficient uses of the public spectrum.

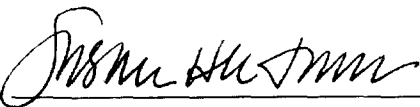
III. CONCLUSION

Geotek supports the Commission's proposals not to impose direct CMRS-to-CMRS interconnection obligations on CMRS providers at this time and urges the Commission to decline to impose resale obligations upon SMR providers. In both cases, Geotek suggests that competition, and thus the public interest, will be furthered if market forces are permitted to operate.

WHEREFORE, for the foregoing reasons, Geotek urges the Commission to adopt regulations in accordance with the opinions expressed herein.

Respectfully Submitted,

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